(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 1317 of 2000.

Appellant/Accused (In Jail). ::: Ghanshyam @ Tulsiram son of Jodhya Dhobi, aged about 46 years, Cultivator, R/o village-Murta, P.S. Nawagarh, Distt: Durg M.P.

Versus.

Respondent. ::: The State of Madhya Pradesh, Through the District Magistrate Durg Distt: Durg M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

(DIVISION BENCH)

Criminal Appeal No.1317 of 2000

Ghanshyam @ Tulsiram

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE MR. JUSTICE DILIP R. DESHMUKH

I agree

Sd/-
Dhirendra Mishra
Judge

POST FOR JUDGMENT ON 18th JULY, 2005

Sd/-

Judge

30th June-2005

(65)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No.1317 of 2000

Ghanshyam @ Tulsiram

- Versus -

State of Madhya Pradesh (now Chhattisgarh)

Present: -

Mr. V.D. Bajpai Sr. Advocate with
Mr. Ashok Das Vaishnav, Advocate: For the appellant.

Mr. M.P.S. Bhatia & Mr. Akhil Mishra,
Panel Lawyers: For the State/respondent.

DIVISION BENCH: -

HON'BLE MR. L.C. BHADOO AND

HON'BLE MR. DILIP R. DESHMUKH, JJ.

J U D G M E N T

(Delivered on 18th July, 2005)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.***-

1. By this appeal under Section 374 (2) of the Cr.P.C. the accused/appellant has questioned the legality of the judgment of conviction and sentence dated 16-3-2000 passed by Learned Additional Sessions Judge, Bemetara, District Durg in S.T. No.195/98 whereby learned Additional Sessions Judge after holding the accused/appellant guilty for the commission of the offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 2 months. He also convicted the accused/appellant for the commission of the offence under Section 324 of the I.P.C. and sentenced him to undergo R.I. for 2 years and to pay a fine of Rs.200/-, in default of payment of fine to further undergo R.I. for 1 month. However, learned Additional Sessions Judge acquitted co-

accused Sahetrin Bai, wife of the accused Ghanshyam, from the charge under Section 302 read with Section 34 and charge under Section 324 read with Section 34 of the I.P.C.

2. The prosecution story, in brief, necessary for the disposal of this appeal is that on 11-4-98 at about 8 am in the morning complainant Leela Bai along with her father-in-law Gokul Sahu and Sister-in-law Munni Bai went to Aabadi land and they started removing sand after digging the land. At that time, accused/appellant Ghanshyam appeared on the scene and asked them as to why they are digging the land and started disputing. He snatched the pickaxe from Leela Bai and attacked Gokul Sahu, father-in-law of Leela Bai with the said pickaxe on his head, chest and back. As a result of receiving the injuries inflicted with the pickaxe, Gokul Sahu succumbed to the injuries instantaneously on the spot. When Leela Bai went to intervene in order to rescue Gokul, the accused/appellant also assaulted her with same pickaxe on the back, as a result of which she also received simple injury and blood started oozing out of the injury. The incident was witnessed by Konda Sahu, Budhariya Bai and Munni Bai. Sahetrin Bai, wife of the accused, was also present there, she exhorted to kill them. When the complainant started intervening, Sahetrin Bai caught hold of her hands and then Ghanshyam assaulted her with the pickaxe. Leela Bai immediately left for the Police Station and reported the matter at Police Station Navagarh, upon which the Police registered the crime at S. No.34/98 under Section 302 of the I.P.C. vide Ex.-P/1.

3. After registering the case, the Investigating Officer prepared the merg intimation Ex.-P/2. Under Ex.-P/3 he took into possession the blouse of Leela Bai. Leela Bai was medically examined by the doctor and the doctor prepared injury report Ex.-P/5. The doctor also prepared the inspection reports Ex.-P/6, Ex.-P/7, Ex.-P/8 & Ex.-P/9 of plain soil and blood stained soil, clothes of the accused, the blouse and the pickaxe respectively. The site plan Ex.-P/10 was prepared by Patwari. The Investigating Officer

after issuing the notice Ex.-P/11 to the witnesses prepared Panchanama of the dead body Ex.-P/12. He sent Ex.-P/13 request for postmortem on the dead body of Gokul. The doctor after conducting postmortem, prepared postmortem report Ex.-P/4. Under Ex.-P/14 the blood stained soil and plain soil were taken into possession from the scene of occurrence. During the investigation, the accused gave memorandum Ex.-P/16 under Section 27 of the Indian Evidence Act to the Investigating Officer and in pursuance thereof he got recovered the pickaxe under Ex.-P/17. The clothes of the accused were taken into possession under Ex.-P/18. The recovered articles were sent for chemical examination to the Forensic Science Laboratory under Ex.-P/26 and report (Ex.-P/28) was received.

4. After completion of the investigation, charge sheet was filed before the Court of Judicial Magistrate, 1st Class, Bemetara who committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and counsel for the accused and perusal of the records, framed the charges against the accused which were denied by the accused who claimed to be tried.

5. The prosecution in order to prove the charge against the accused persons examined as many as 14 witnesses. Learned Additional Sessions Judge recorded the statements of the accused persons under Section 313 of the Cr.P.C. Accused/appellant Ghanshyam in his statement stated that witnesses are false, he is innocent and he has been falsely implicated in the crime. Similar statement was made by Sahetrin Bai, wife of the accused. After hearing the arguments of learned Public Prosecutor and counsel for the accused persons and placing reliance on the prosecution evidence, learned Additional Sessions Judge passed the impugned judgment convicting and sentencing the accused/appellant and acquitting co-accused Sahetrin Bai, wife of the accused/appellant.

6. We have heard Mr. V.D. Bajpai, Sr. Advocate with Mr. Ashok Das Vaishnav Advocate for the appellant and Mr. M.P.S. Bhatia with Mr. Akhil Mishra, Panel Lawyers for the State/respondent.

7. As far as the question of death of Gokul Sahu being homicidal is concerned, the same has not been disputed by learned counsel for the accused/appellant. PW-4 Dr. Satish Kumar Sharma has stated that he conducted the postmortem on the dead body on 11-4-98 at about 1:30 pm and he found that there was lacerated wound on the middle of frontal region of fore head. Clotted blood was present in the size of 1 ½ " x1/2". Fractured piece of skull bone was lying inside. The torn meninges and brain matter were lacerated and mixed blood clots associated complete fracture of middle of right half of frontal bone extending from wound, margin appears to be sharp but internal structure lacerated wound is horizontal in direction. Lacerated punctured wound under the right armpit in the size of 1 ½ "x ½ " and dry clotted blood was present extending up to right side of underneath chest involving fracture of 2nd, 3rd, 4th ribs filled with blood, subcutaneous tissues lacerated. Lacerated punctured wound behind the base of right side of neck in the size of 1 ½ " x ½ "x 3" deep dissection laceration of underlying structure with a fracture of 8th cervical. Dry clotted blood was present. Lacerated punctured wound in front of left chest in the size of 1 ½ " x1/2" extending deeply in left chest cavity. Lacerated wound in the size of 2"x1/2"x skin and muscle deep on the middle and lateral aspect of right arm and dry clotted blood was present. In the opinion of the doctor, the probable cause of death was multiple deadly homicidal wounds involving vital structures, brain and lungs with profuse blood and the nature of the death was homicidal. PW-3 Leela Kumari, PW-1 Munni Bai, PW-6 Shivkumari and PW-7 Meghnath are the eyewitnesses to the incident and they have categorically stated that the accused/appellant assaulted Gokul with the pickaxe on his head, chest and back. Therefore, in view of the

above evidence, the trial Court has rightly held that the nature of death of Gokul was homicidal.

8. Now, coming to the involvement of the accused/appellant in committing murder of Gokul, PW-3 Leela Kumari, PW-1 Munni Bai, PW-6 Shivkumari and PW-7 Meghnath were the eyewitnesses to the incident. Just after the incident, PW-2 Jagdishram and PW-9 Thakurram, reached on the spot. All these witnesses have categorically and consistently stated that in the morning at about 8 am Leela Bai PW-3 along with PW-1 Munni Bai and deceased Gokul went to the land. When they started digging the land, the accused/appellant came on the scene and started hurling abuses. He snatched the pickaxe from the hand of PW-3 and thereafter Gokul (deceased) asked the accused/appellant as to why he is taking away their pickaxe. He tried to take back the pickaxe and in that process, both of them started pulling the pickaxe to their side. The accused/appellant took Gokul towards the house of Dayaram and there he attacked Gokul with the pickaxe on his head, chest and back, as a result of which Gokul received as many as 5 lacerated wounds and out of which the head and chest injuries were found to be fatal to the life as per medical evidence. The trial Court after analyzing the evidence and cross-examination, reached to the conclusion that all the four witnesses were eyewitnesses to the incident and they witnessed the crime. Leela Bai from whom the accused snatched the pickaxe when tried to intervene and rescue Gokul, the accused/appellant also assaulted her with the same pickaxe, as a result of which she received simple injury on the back which is evident from the injury report Ex.-P/5. We have also perused the evidence. We do not find any reason to differ from the finding of the trial Court that all these witnesses were eyewitnesses. One of the eyewitnesses named in the F.I.R. namely, Konda Sahu could not be produced as he died and Budhariya Bai was also not produced. The trial Court also held that even though the names of eyewitnesses Shivkumari and Meghnath do not find place in the first information report, but in view of the evidence on

record and the fact that they are the residents of same vicinity, therefore, their presence could not be doubted. We do not find any infirmity in the above finding of the trial Court after perusing the evidence of these eyewitnesses that they witnessed the crime and the accused/appellant was the author of the injuries received by Gokul. In the cross-examination of these witnesses defence counsel could not elicit anything which makes the evidence of these witnesses unreliable. The presence on the scene of occurrence of these witnesses cannot be doubted. The evidence given by these witnesses is corroborated by the medical evidence and one witness Leela Bai was injured in the same incident. It is true that all of them are related or are from the same caste 'Sahu', but merely on this ground their evidence cannot be disbelieved. The postmortem report of the deceased in which 5 lacerated wounds were found on the head, chest, hand and back of the deceased corroborates the evidence of these eyewitnesses. Even the pickaxe was taken away by the accused which was recovered by the Investigating Officer from the possession of the accused in pursuance of the information given by the accused Ex.-P/16 and that has been proved by the witnesses of two documents viz. memorandum and seizure memo by PW-13 Shiv Kumar and PW-14 Sahbir and Investigating Officer Laxmiprasad (PW-11). Therefore, in view of the evidence of these witnesses, medical evidence and recovery of the weapon of offence at the instance of the accused proves the fact that the accused was the person who attacked the deceased with the pickaxe which was recovered from him. Therefore, argument of learned Senior Advocate about the innocence of the accused has no weightage and the same is without substance.

9. Learned Senior Advocate urged that when the complainant party started damaging the medh (ridge), which was between the land of the complainant party and the accused persons, the accused/appellant came armless on the spot and objected the same. However, the complainant party did not stop. Therefore, the act of the accused/appellant falls

under the category of right of private defence of the person/property. Learned Senior Advocate relied upon the judgment of the Hon'ble Apex Court in the matter of **SUBRAMANI AND OTHERS VERSUS STATE OF TAMIL NADU** reported in **2002 Cri.L.J. 4102.** He also relied upon decisions in the matters of **RAM NARAIN & OTHERS V. STATE OF UTTAR PRADESH** reported in **AIR 1972 SUPREME COURT 2544, DHEER SINGH AND ANOTHER VS. STATE OF MADHYA PRADESH** reported in **1988 M.P.L.J. 241** and **GOPAL AND OTHERS V. THE STATE OF RAJASTHAN** reported in **AIR 1972 SUPREME COURT 1838.**

10. At this stage, it would be profitable to have glance over the provisions of right of private defence before discussing the arguments advanced by learned Senior Counsel for the accused/appellant. Section 96 of the I.P.C. envisages that '*nothing is an offence which is done in the exercise of the right of private defence.*' Section 97 envisages that '*Every person has a right, subject to the restrictions contained in section 99, to defend--- First—His own body, and the body of any other person against any offence affecting the human body; Secondly---The property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery, mischief or criminal trespass.*' Section 99 envisages that 'There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law. There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.' Further envisages that 'The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.' Clause 1 and 2 of Section 100 envisages that 'The right of

private defence of the body extends to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated namely:- (1) Such an assault, as may reasonably cause the apprehension that death will otherwise be the consequence of such assault; (2) Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault.'

11. Section 102 envisages that 'The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.' Section 103 envisages that 'The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right, be an offence of any of the descriptions hereinafter enumerated, namely theft, mischief or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

12. The right of private defence rests on three ideas: (1) there must be no more harm inflicted than is necessary for defence; (2) There must be a reasonable apprehension of danger to the body from the attempt or threat to commit the offence; and (3) The right of private defence is subject to restrictions imposed by Section 99 and the right is co-terminus with the commencement and existence of a reasonable apprehension or danger to body from an attempt or a threat to commit the offence. It avails only against a danger, real and imminent.

13. Now, in the light of above law regarding right of private defence, if we examine the case in hand, in the present case, there is categorical finding of the trial Court that the complainant party was digging their own land. They had not trespassed on the land of the accused. In this connection, if we look into the evidence of Patwari (PW-8) who prepared the site plan of the scene of occurrence Ex.-P/10, he has categorically stated that the deceased party was digging towards the land of Jagdish, son of the deceased and they had started digging on the Medh (ridge) on the side of Jagdish. The witnesses informed that the Medh was between the land of Jagdish and Ghanshyam. He had not measured that in whose land the Medh was existing. He has further stated that it is incorrect to say that the father of Jagdish and others trespassed. It was informed to him that Jagdish, son of the deceased, was already in possession of the land and it is incorrect to say that they had started digging on the side of Ghanshyam. PW-11 the Investigating Officer has clearly stated that at about 9:20 am on the date of the incident i.e. 11-4-98 he inspected the site and prepared the seizure memo which bears his signatures 'b' to 'b'. He took into possession the blood stained soil and plain soil from the place of occurrence. In para-5 of his evidence he has clearly stated that at S. No.1 in the map the land was in possession of Gokul and that land is Government land which was under the unlawful possession of Gokul. The land at S. No.5 belongs to accused Ghanshyam and the deceased was digging at S. No.1 in his own land and that land was in possession of Gokul. In the site plan prepared by the Investigating Officer at S. No.1 the place of digging has been shown in the red ink and that has been shown in the possession of Gokul. Therefore, in view of the above evidence, Gokul and others were digging on the Government land which was under their possession, therefore, the trial Court has rightly held that the place where the complainant party was digging was not belonging to the accused/appellant. As such, in the circumstances, no right of private defence to the property was available to the accused/appellant.

14. Now, coming to the right of private defence regarding person, learned counsel for the accused/appellant argued that the accused/appellant went armless on the site and the complainant party started quarrelling and tried to assault him and it has come in the evidence that the deceased and the accused were pulling the pickaxe on their side and in that process, the deceased received injuries, therefore, the accused cannot be held responsible. But, this argument has also been rejected by the trial Court and after perusing the evidence of eyewitnesses namely, PW-3 Leela Kumari, PW-1 Munni Bai, PW-6 Shivkumari and PW-7 Meghnath in which they have clearly stated that the accused/appellant snatched the pickaxe from Leela Bai and thereafter, when Gokul tried to take back that pickaxe saying that why the accused/appellant is taking the pickaxe, in that process, both of them started pulling the pickaxe towards their side. The accused pulled the deceased towards the house of Dayaram and at that place the accused/appellant attacked the deceased with the pickaxe and took that pickaxe to his place from where it was recovered at his instance under his memorandum. Therefore, merely saying that the accused went on the scene of occurrence armless and the complainant party was having arm, therefore, the right of private defence to the person extending the death of Gokul arose to the appellant cannot be considered to be genuine. In the first instance, there is nothing on record that the accused received any injury what to talk of any grievous injury which was caused by Gokul and there is no such suggestion in the cross-examination of the witnesses that the accused/appellant received injury from the pickaxe caused by Gokul. As has been mentioned above, the right of private defence to the body is subject to restrictions imposed in Section 99. The right of private defence rests on the ideas that there must be no more harm inflicted than is necessary for defence and there must be a reasonable apprehension that death or grievous hurt will be the consequence, if the right of private defence is not exercised. In this case, there was no reasonable apprehension to the accused/appellant that

the complainant party is going to attack him with any deadly weapon, as the pickaxe was already snatched by him and even from Gokul he snatched and attacked Gokul with same pickaxe. Therefore, when the pickaxe came into exclusive possession of the accused/appellant, there was no apprehension or danger to the accused/appellant, as such there was no reasonable apprehension commenced. As per Section 102 of the I.P.C. the right of private defence continues as long as such apprehension of danger to the body continues. As per the provision of Section 102, the accused/appellant was not entitled to attack Gokul with the pickaxe, as there was no apprehension of danger to the body of the accused/appellant. The moment the accused/appellant snatched the pickaxe from Gokul right of private defence terminated with that action, as the right of private defence is co-terminus with the commencement and existence of a reasonable apprehension or danger to body from an attempt or a threat to commit the offence. Therefore, we do not find any substance in the argument of learned counsel for the accused/appellant that the injuries were inflicted by the accused/appellant while exercising the right of private defence of person, rather the accused/appellant assaulted Gokul mercilessly as a result of which he received as many as 5 lacerated wounds resulted into fracture of skull and ribs.

15. Now, coming to the judgments cited by learned counsel for the accused/appellant, the matter of **Subramani and others** (Supra) is of no help to the accused/appellant on facts as in that case the accused party was in possession of the field (disputed place) since last 50 years. Moreover, in that case, the appellants No.2 and 3 received injuries on the head and vital part of the body, therefore, the right of private defence was held to be available to the accused party which was not the fact in this case.

16. Similarly, in the matter of **Ram Narain & Others** (Supra), the facts of that case were that when accused Ram Narain and others reached on the spot to cut the tree, deceased Sarabjit, Gur Prasad and the wife of Sarabjit came on the spot where the tree was. They asked Ram Narain not to cut the tree. Then Ram Narain, his son Hari Prasad, Jag Mohan and Ghasitey shouted that Sarabjit and his wife and their son should be killed. They then assaulted them with lathis. Sarabjit, his wife and son tried to run away. When they reached the neighbouring field of Sri Krishna, the other appellants surrounded them so that they could not run away and further injuries were inflicted on the instigation of those persons by Ram Narain and others. The defence of Ram Narain and Hari Prasad was that they had acted in self defence. While they were cutting the mango tree which they were entitled to do, Sarabjit and others came and assaulted them with lathies and they had to inflict blows in self defence. The Court while rejecting the right of private defence held that "the deceased had five injuries, three of which were contused wounds mainly on the head or in the region of head and the medical evidence showed that there was fracture of the skull, and similar wounds were also inflicted on the other two companions of the deceased, considering the serious nature of and the number of the wounds inflicted on the complainant party, and taking into consideration that the beating by the accused party continued upto quite some distance from the bone of contention.' The Court rejected the contention of self defence. Similarly, in the present case also the nature of injuries received by Gokul belied the defence of the accused that in the right of private defence he inflicted the injuries on Gokul.

17. In the matter of **GOPAL AND OTHERS** (Supra) the Court held that 'the injuries which were inflicted on the members of the accused party were so numerous and extensive and even involved two ladies. This lends support to the case set up in defence that the injuries which were inflicted by the accused were caused in defence of their person when they had been attacked in the house of Gopal. It is somewhat significant

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and this fact has been stressed by the High Court also that one of the ladies, namely, Mst. Chawali was about 75 to 80 years of age.' Therefore, the Court allowed the right of private defence, but in the present case, as has been mentioned above, that no injury was received by the accused/appellant whereas, he caused as many as 5 serious injuries on the vital part of the body of the deceased.

18. Similarly, the High Court of Madhya Pradesh in the matter of **Dheer Singh And Another** (Supra), while relying on a decision in the matter of **Seriyal Udayar's** case reported in **AIR 1987 SC 1289** held that "if on facts there are materials and circumstances appearing on the record which, though not sufficient to establish the right of private defence of the accused, indicated that the incident might have happened in the manner in which it was suggested by the accused, then the case of the prosecution cannot be said to have been proved beyond reasonable doubt and the benefit would go to the accused and he would be entitled to acquittal." If we look to the defence of the accused persons in that case, accused Bishambhar Singh explained the incident in his statement under Section 313 of the Cr.P.C. that he was sleeping in the room housing the machinery of his tube-well, which was near the place of occurrence. There was a noise of gun-firing. He came out of his room to see what it was all about. The gunshot pellets struck him and he was injured. Hearing the hue and cry, his brother Surendra had come to his rescue and from atop the room his brother Surendra had fired from his 12-bore gun. About 25 to 30 persons had surrounded the room and all of them were armed with guns and other weapons. Deceased Dataram had a 12-bore gun, Angad (PW-6) had a mouzer gun and he was also firing. Shriram (PW-1) also had a 12-bore gun and he was also firing. Appellant Bishambhar Singh went to the Police station and lodged the report, and thereafter he was taken by the Police to the hospital for medical examination. In that case, the prosecution was not able to prove the incident in the manner it was alleged and by believing the probable defence created by the accused in

his statement under Section 313 the Court held that the benefit would go to the accused regarding right of private defence. The Court further held that "the investigation is partisan and is wholly tainted. The prosecution witnesses have not stated the truth and their evidence is liable to be rejected. The injuries on the body of Bishambhar Singh have been suppressed and have not been explained." Therefore, on the basis of materials and circumstances on record, the Court reached to the conclusion that the possibility of the exercise of the right of private defence by the appellant cannot be ruled out and acquitted. Therefore, on facts, the above decision is of no help to the accused/appellant.

19. In the present case, as has been mentioned above, the facts are entirely different. In the first instance the complainant party was digging their own land and even the complainant party was not aggressor in the first place, in order to prevent them from digging the accused/appellant snatched the pickaxe. When the deceased tried to take back that pickaxe from the accused/appellant and as per the evidence available on record, the accused/appellant and the deceased started pulling the pickaxe on their side and in that process the accused/appellant overpowered Gokul taking the pickaxe completely in his possession started attacking Gokul, therefore, the accused/appellant was not entitled for exercising the right of private defence and it has been rightly rejected by the trial Court.

20. As far as the question that deceased Gokul received injuries in the scuffle while snatching the pickaxe from the accused/appellant, this argument of learned counsel for the accused/appellant is without force for the reason that deceased Gokul received 5 injuries in the form of facture of skull, fracture of middle of right half of frontal bone. Lacerated punctured wound under the right armpit which was extending up to right side of chest involving fracture of 2nd, 3rd, 4th ribs. There was lacerated wound behind the base of right side of neck and other

lacerated wound was also on the chest and 5th one on the right arm. The nature of injuries shows that it was impossible to receive such injuries by the deceased while trying to take pickaxe back from the accused/appellant, particularly, when the accused/appellant has not received single injury, rather the nature of the injuries and evidence conclusively proves that the accused/appellant assaulted the deceased with pickaxe after snatching the same.

21. Learned Senior Counsel for the appellant also argued that the accused/appellant reached armless, without any preparation or pre-plan and all of a sudden, without pre-meditation, when the accused/appellant snatched the pickaxe from the deceased, in a heat of passion, he assaulted the deceased without any intention to commit murder of the deceased. Therefore, the present case is covered under exception IV of Section 300 of the I.P.C. and comes under the category of culpable homicide not amounting to murder.

22. On the facts, we are unable to accept this contention of learned counsel for the accused/appellant for the reason that it is true that in the first instance the accused/appellant went armless on the scene of occurrence, but he snatched the pickaxe from PW-3 Leela Bai and when the deceased tried to take back the said pickaxe from the accused/appellant, the accused also started pulling with the pickaxe in order to prevent Gokul from taking the pickaxe from him. When he snatched that pickaxe from the deceased, he assaulted the deceased with that pickaxe on the vital part of the deceased. As the deceased was armless, therefore, taking undue advantage of the situation that pickaxe was in his possession, he assaulted the deceased mercilessly on the vital part of the body who was armless. Moreover, the complainant party was never aggressor and they had never attacked the accused/appellant. On the contrary, the accused/appellant after snatching the pickaxe from the complainant party, attacked the deceased and caused serious injuries on the vital part

of the body i.e. head, chest and back, as a result of which the deceased died on the spot, as such this case is not covered under exception IV of Section 300 of the I.P.C. No other point was argued by learned counsel for the accused/appellant.

23. As far as offence under Section 324 of the I.P.C. is concerned, PW-3 Leela Bai has categorically stated that the accused assaulted her with pickaxe which find corroboration from medical report Ex.-P/5 of PW-3 Leela, therefore, the offence under Section 324 of the I.P.C. was also proved against the accused/appellant and he has been rightly convicted by the trial Court for the said offence.

24. For the foregoing discussion, the accused/appellant has not been able to make out a case for interference by this Court in the judgment of the trial Court. We are of the considered opinion that findings of the trial Court convicting the accused/appellant for the commission of the offence under Sections 302 and 324 of the I.P.C. are based on legal evidence and the same do not require any interference by this Court.

25. In the result, the appeal is without any merit, same fails and liable to be dismissed and it is hereby dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge
1-7-2005

Barve